IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

CUSTOM APPEAL NO.9 OF 2006

The Commissioner of Customs
(Preventive), Mumbai. Appellant
vs.
M/s.Shri Ganesh Enterprises Respondent

Mr.R.V.Desai, senior counsel with Mr.V.B.Kantharia, advocate i/b.Dr.T.C.Kaushik for the appellant.

Mr.S.N.Kantawala i/b.Mr.Yogesh Rohira for the respondent.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 8th March, 2006

P.C.

Heard Mr.R.V.Desai, the learned senior counsel for the appellant.

2. Mr.R.V.Desai contends that it is not the law that in all cases of non-notified goods, the burden is on the Revenue to prove illegal entry of those goods into the country. He would submit that the Tribunal was wrong in observing that it was well settled law that in cases of non-notified goods, it was for the Revenue to prove the illegal entry into the country. He relied upon the judgment of the Supreme Court in the case of Collector of Customs, Madras & ors. v. D. Bhoormull, 1983 E.L.T.1546.

3. In paragraph 32 of the report, the Supreme Court held thus:

> "32. Smuggling is clandestine conveying of goods to avoid legal duties. Secrecy and stealth being its covering guards, it is impossible for the Preventive Department to unravel every link of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the person concerned in it. On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned: and if he fails to establish or explain those facts, an adverse inference of facts may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the result prove him guilty. As pointed out by Best in 'Law of Evidence' (12th Ed. Article 320, page 291), the "presumption of innocence is, no doubt, presumptio juris : but every day's practice arising from the recent (unexplained) possession of stolen property," though the latter is only a presumption of fact. Thus the burden on the prosecution or the Department may be considerably lightened even by such presumption of fact arising in their favour. However, this does not mean that the special or peculiar knowledge of the person proceeded against will relieve the prosecution or the Department altogether of the burden of producing some evidence in respect of that fact in issue. It will only alleviate that burden to discharge which very slight evidence may suffice."

4. It would be, thus, seen that the Supreme Court held that even if a person who is to be proceeded against has a special or peculiar knowledge facts, the Department is not relieved of its burden to establish that the goods have entered into the country illegally and that the said goods were smuggled.

5. In the light of the legal position highlighted by the Supreme Court in D.Bhoormull, it cannot be said that any wrong principle of law was applied by the Tribunal.

6. It is pertinent to note that initially the case of the Revenue was that the seized goods were not the goods imported vide Bills of entry submitted by the respondent. However, on re-verification, the only discrepancies that were found were regarding the wrong description or incorrect country of origin. In the facts and circumstances of the case, therefore, the burden lay on the Department to produce some material/evidence to establish that the seized goods were smuggled goods which they miserably failed to do. As to whether the party upon whom the burden lies to prove a fact, has discharged the burden or not is always a question of fact.

7. The impugned order does not give rise to any substantial question of law.

8. Custom Appeal is dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)